

THE INDUSTRIAL COURT

**THE TRADE UNION AND LABOUR RELATIONS (NORTHERN IRELAND)
ORDER 1995 (AS INSERTED BY ARTICLE 3 OF THE EMPLOYMENT
RELATIONS (NORTHERN IRELAND) ORDER 1999)**

SCHEDULE 1A – COLLECTIVE BARGAINING: RECOGNITION

DECISION ON THE BARGAINING UNIT

The Parties:

Unite the Union

And

Kestrel Foods Ltd.

DECISION

Background

1. The Industrial Court (the Court) received an application on 13th March 2018, for recognition at Kestrel Foods Ltd, Unit 8, Carn Drive, Carn Industrial Estate, Portadown BT63 5WJ. This address is the location of the proposed bargaining unit. The bargaining unit was described as “production operatives.” The Court accepted the application by way of a short Decision dated 16th April 2018 and a Long Decision, issued on 2nd May 2018.

The ‘appropriate period’ within which to agree a bargaining unit

2. The Case Manager wrote to the Parties on 17th April, in light of the Panel’s acceptance of the application. First, he set out the details of the ‘appropriate period’ within which the Parties had an opportunity to agree an appropriate bargaining unit.

3. Paragraph 18 of the Schedule provides:-

“(1) If the Court accepts an application under paragraph 11(2) or 12(2) it must try to help the parties to reach within the appropriate period an agreement as to what the appropriate bargaining unit is.

(2) The appropriate period is (subject to any notice under sub-paragraph (3), (4) or (5))

(a) the period of 20 working days starting with the day after that on which the Court gives notice of acceptance of the application, or

(b) such longer period (so starting) as the Court must specify to the parties by notice containing reasons for the extension.

(3) If, during the appropriate period, the Court concludes that there is no reasonable prospect of the parties' agreeing an appropriate bargaining unit before the time when (apart from this sub-paragraph) the appropriate period would end, the Court may, by a notice given to the parties, declare that the appropriate period ends with the date of the notice."

4. In his letter, the Case Manager outlined that the negotiation period was due to end on 16th May.

5. Secondly, the Case Manager set out the requirements of paragraph 18A on the Employer to provide the Court with accurate information in relation to the proposed bargaining, as a basis for negotiations between the Parties.

6. The provisions of paragraph 18A state:-

"(2) Within 5 working days starting with the day after that on which the Court gives the employer notice of acceptance of the application, the employer must supply the following information to the union (or unions) and the Court—

"(a) a list of the categories of worker in the proposed bargaining unit,

... and

(c) the number of workers the employer reasonably believes to be in each category at each workplace.

(3) The lists and numbers supplied under this paragraph must be as accurate as is reasonably practicable in the light of the information in the possession of the employer at the time when he complies with sub-paragraph (2)."

7. On 24th April, the Employer provided a list of the names, addresses and job titles of 49 workers, "listed as 'Production Operative' on their statement of main terms of employment."

8. It became apparent in discussions between the Case Manager and the Parties that there was little prospect of an informal meeting between the Court and the Parties. The Chairman wrote to the Parties on 30th April setting out the options for the Parties and the Court during and after the appropriate period and encouraging the Parties to attend an informal meeting.

9. The Court had noted a degree of uncertainty over the number of workers constituting the proposed bargaining unit at the acceptance stage. In paragraph 7 of the Acceptance Decision, the Court stated, "The Panel also noted that there was a degree of uncertainty over which workers constituted the proposed bargaining unit. In particular, there was a discrepancy between the number of workers perceived to be in the proposed bargaining unit by each Party. There was also a discrepancy between the job titles provided by the Employer and the Union."

10. In his letter of 17th April, the Case Manager pointed out this initial uncertainty. "In light of paragraph 18A(3), the Panel requires clarity from the Employer, and also seeks clarity from the Union, as to whether 'Production Operative' is an accurate job title, either on a contractual basis or as a job title in common usage in the workplace, to describe the 'categories of workers' in the proposed bargaining unit or whether there are more specific job titles, of either kind, used to describe these workers."

11. In response, the Union stated, on 18th April, “we are of the view that all of those mentioned on our lists are classed as Production Operatives in the Bargaining Unit in general terms.” In response to the paragraph 18A requirement to provide further information to the Court, the Employer indicated, on 24th April, that there were 49 workers in the group of workers making up the proposed bargaining unit, described “as ‘Production Operative’ on their statement of main terms of employment”.

12. In further correspondence between the Parties, via the Court, the Union and the Employer appeared to agree that the proposed bargaining unit was an agreed bargaining unit. However this was on the basis that the Employer was seeking agreement with the Union that the group of workers amounted to the 49 workers identified in its response to the requirements of paragraph 18A. In its email correspondence to the Court, dated 10th May, the Employer stated, “I wish to firstly enquire if Unite are in agreement that ‘Production Operatives’ is an appropriate bargaining unit for the purposes of collective bargaining and that includes 49 members of staff at present.” (emphasis added). The Union stated, in an email of 10th May, that it was “in agreement with the bargaining unit proposed now by Unite and the employer.”

Identification of workers constituting the agreed bargaining unit and whether it differed from the proposed bargaining unit.

13. The original uncertainty identified by the Court in its Acceptance Decision had, in the Panel’s view, been exacerbated by a further discrepancy between the number of workers provided by the Employer in the acceptance checks, namely 59 workers, and those provided under the paragraph 18A duty, namely 49 workers. The Chairman came to the view that a hearing was necessary to clarify precisely which workers were included in the agreed bargaining unit and whether the agreed bargaining unit differed from the proposed bargaining unit.

14. The Chairman, having considered the papers and in preparation for an upcoming Hearing, which had been arranged for 22nd May, wrote again to the Parties on 17th May setting out his understanding of the position

15. The options presented to the Panel in the Note of 17th May were:-

1) to accept that the group of workers in the proposed bargaining unit are ‘Production Operatives’ as understood by both Parties and the Panel during the acceptance stage.

In these circumstances, the primary task of the Panel would be to determine which groups of workers, whether by contract or common usage, come within the description ‘Production Operatives’.

2) to consider whether the proposed bargaining unit, as now agreed between the Parties, can be narrower than that understood at the acceptance stage and, if so, the extent of the group of workers involved.

3) to consider whether the Parties have agreed a bargaining unit which is different from the proposed bargaining unit.

This conclusion would precipitate fresh validity tests under paragraphs 43-50 of the Schedule, including fresh membership/ ‘majority likely to’ checks on the different bargaining unit.

16. In relation to both 2) and 3), the preliminary view of the Chairman was that it would take more than an ‘agreement’ as to the number of workers in the group of workers to either narrow the group of workers making up the proposed bargaining unit or to agree a different bargaining unit.

17. The Chair invited the parties to make submissions on these options and requested further information prior to the Hearing to be held on 22nd May 2018. In order to assist the Court in its deliberations and during the hearing, the Employer was invited to provide the following (redacted) evidence:-

1) a template written statement and/or contract of employment and/or contractual or other job description for a ‘Production Operative’;

2) any evidence of variation of tasks amongst such Production Operatives;

3) job titles and any supporting evidence, contractual or otherwise, for any workers included in the original membership/ ‘majority likely to’ checks (59 workers) but not in the response to the Paragraph 18A requirement (49 workers).

18. The Union was also at liberty to provide redacted evidence and supporting documentation in relation to these matters.

Further Clarification Prior to a Hearing

19. The Chair wrote a further note to the parties on 21st May 2018 prior to the Hearing on 22nd May to clarify the purpose of the Hearing, which stated the following:-

“At this stage, there is a lack of clarity, as set out in my Note of 17th May 2018, as to which workers are included in the bargaining unit apparently agreed between the Parties.

20. The legal position is set out in paragraphs 20 and 21 of the Schedule.

21. Paragraph 20 provides:-

“(1) This paragraph applies if—

(a) the Court accepts an application under paragraph 11(2) or 12(2),

(b) the parties have agreed an appropriate bargaining unit at the end of the appropriate period (defined by paragraph 18), or the Court has decided an appropriate bargaining unit, and

(c) that bargaining unit differs from the proposed bargaining unit.

(2) Within the decision period the Court must decide whether the application is invalid within the terms of paragraphs 43 to 50.

(3) In deciding whether the application is invalid, the Court must consider any evidence which it has been given by the employer or the union (or unions).

(4) If the Court decides that the application is invalid—

(a) the Court must give notice of its decision to the parties,

(b) the Court must not proceed with the application, and

(c) no further steps are to be taken under this Part.

(5) If the Court decides that the application is not invalid it must—

(a) proceed with the application, and

(b) give notice to the parties that it is so proceeding.

(6) The decision period is—

(a) the period of 10 working days starting with the day after that on which the parties agree an appropriate bargaining unit or the Court decides an appropriate bargaining unit, or

(b) such longer period (so starting) as the Court may specify to the parties by notice containing reasons for the extension.” (emphasis added)

22. The key issue under paragraph 20 is set out in paragraph 20(1)(c), namely whether the agreed bargaining unit differs from the proposed bargaining unit. It appeared to the Panel, from the correspondence between the Parties, that the bargaining unit was agreed on 11th May. If the agreed bargaining unit is the same as the proposed bargaining unit, paragraph 21 applies.

23. Paragraph 21 provides:-

“(1) This paragraph applies if—

(a) the Court accepts an application under paragraph 11(2) or 12(2),

(b) the parties have agreed an appropriate bargaining unit at the end of the appropriate period (defined by paragraph 18), or the Court has decided an appropriate bargaining unit, and

(c) that bargaining unit is the same as the proposed bargaining unit.

(2) This paragraph also applies if the Court accepts an application under paragraph 12(4).

(3) The Court must proceed with the application.” (emphasis added)

24. Paragraph 21 therefore applies if the agreed bargaining unit is the same as the proposed bargaining unit. The Note re-iterated the options for the Panel in light of the outcome of the Hearing. On 21st May, the Chairman conveyed to the Parties a brief Note on the order of proceedings at the Hearing.

The Hearing

25. The hearing took place on 22nd May 2018 in Killymeal House. The Union was represented by Mr Sean McKeever and Mr Vernon Hegarty. The Employer was represented by Mr David Johnson, General Manager, and Ms Eva McElroy, HR Manager.

26. After the Chairman made some preliminary remarks about the outstanding issues, both sets of representatives declared themselves satisfied that they had agreed the proposed bargaining unit and that it was made up of the 49 workers identified by the Employer in its response to the paragraph 18A requirements.

27. Mr McKeever, on behalf of the Union, stated that there was no ambiguity about the bargaining unit, as agreed. Ms McElroy and Mr Johnston, on behalf of the Employer, stated that there were fluctuations in the workforce in the food sector. In response to a specific inquiry about the discrepancy between the 59 workers identified in the acceptance checks and the 49 workers identified in the paragraph 18A response, it was stated that some workers, such as those working in the warehouse and forklift drivers, are not production operatives and do not have the contractual title of 'Production Operative'. The Union also confirmed that all the job titles which it had provided came within the 'Production Operative' job title.

28. In these circumstances, the Chairman concluded, on behalf of the Panel, that the agreed bargaining unit did not differ from the proposed bargaining and that the Court could move to the next stage of the statutory process, in relation to a membership check on a ballot/recognition.

Conclusions

29. The Panel concluded, in light of the remarks made by both Parties at the Hearing, that the 49 workers constituting the agreed bargaining unit were made up of the category of workers with contractual job titles of 'Production Operatives' and that the agreed bargaining unit did not differ from the proposed bargaining unit.

DECISION

30. The Decision of the Industrial Court is that the appropriate Bargaining Unit is that proposed by the Union, that is,

"Production Operatives."

Barry Fitzpatrick

Mr Barry Fitzpatrick
Mr Patrick Masterson
Mr Robin Bell

Date of decision – 22nd May 2018
Date decision issued to Parties – 2nd July 2018